

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

NEFT, LLC,)
Plaintiff,)
)
v.) No. 3:04-CV-536
) (Phillips)
BORDER STATES ENERGY, LLC,)
WILLIAM STAPES (an individual),)
JAMES T. STAPLES (an individual),)
ANNETTE B. STAPLES (an individual),)
LYLE H. COOPER (an individual),)
PATRICK L. MARTIN (an individual), and)
STEVEN A. WALLACE, (an individual),)
Defendants.)

ORDER

This matter is before the court on defendant Patrick Martin's motion to alter or amend the judgment [Doc. 94]. Mr. Martin points out that the court's Findings of Fact and Conclusions of Law found that Border States Energy was liable for reimbursement to NEFT for its reasonable attorney fees and costs incurred in enforcing the parties' settlement [Doc. 77]. However, in the order entered July 25, 2007, the court ordered "defendants" to reimburse NEFT for its attorney fees and costs [Doc. 92]. Therefore, Mr. Martin asks the court for an order clarifying that Border States Energy and not the individual defendants are liable to NEFT for its attorney fees and costs.

NEFT has not responded to the motion to amend, but instead, has filed a notice of appeal of the judgment. Federal Rule of Appellate Procedure 4(a)(4)(B) provides that "if a party files a notice of appeal after the court announces or enters a judgment – but

before it disposes of any motion listed in Rule 4(a)(4)(A) – the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.” Accordingly, although NEFT has filed a notice of appeal, the court will proceed to address the pending motion filed by defendant Martin so that the appellate court will have all issues before it on appeal.

Defendant Martin is correct that the court’s Findings of Fact and Conclusions of law awarded NEFT attorney fees and costs from Border States Energy only, and not from the individual defendants. Accordingly, defendant Martin’s motion to amend judgment [Doc. 94] is **GRANTED**, whereby the court’s judgment [Doc. 93] will be amended to reflect that “Defendant Border States Energy is **ORDERED** to reimburse NEFT for its reasonable attorney fees and costs incurred in enforcing the settlement in this case.”

IT IS SO ORDERED.

ENTER:

s/ Thomas W. Phillips

United States District Judge